

**Remarks/Arguments:**

**Introduction**

Claims 5-12 and 14-22 are pending. Claims 12 and 14-22 are withdrawn. Claims 1-5, 23 and 24 are canceled. Claim 10 has been non-narrowingly amended to better describe the present invention. Claims 5 and 7 have been amended to depend from claim 10. Claim 6 has been amended for antecedent basis. Withdrawn claim 12 has been amended in a similar fashion to the amendments of claim 10.

**Section 112 Rejections**

Claims 1 and 5-11 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Applicant respectfully submits that with the amendments presented herein, the Section 112 rejections are obviated.

Reconsideration and withdrawal of the Section 112 rejections are respectfully requested.

**Section 102/103 Rejections**

Claims 5-8, 10 and 11 were rejected under 35 U.S.C. § 102(b) and/or under 35 U.S.C. § 103(a) as allegedly being unpatentable over US 816,470 to Higgins (hereinafter "Higgins"). Applicant respectfully traverses.

Amended independent claim 10 recites, *inter alia*, that the nozzle comprises a T-piece. The head of the T-piece is defined as having an internal curvature which defines two deflectors that converge towards the aperture. The pins that move along the head of the T-piece vary the effective cross-sectional area of the aperture.

Higgins fails to disclose, teach or suggest a T-piece. The nozzle component of the burner shown in Figure 2 of Higgins and on the right hand side of Figure 1 of Higgins includes a cylindrical pipe 5 which terminates in an end wall with an outlet aperture that

is unnumbered. The wall of the pipe 5 of Higgins has two threaded apertures numbered 9 (see, Higgins, column 2, lines 57 to 59), these apertures accommodate the two plugs 10 and 11. There is no T-piece having an internal curvature that extends across the interior of the pipe 5 to operate as the two deflectors which are key features of the flat jet nozzle of the subject application. Thus, Higgins fails to disclose, teach or suggest at least two deflectors, rather the internal cylindrical surface of 9 converges to the aperture 7. There is no internal cylindrical surface of 9 that converges to the aperture 9. Aperture 9 is merely a threaded hole.

In paragraph 6 of the Final Rejection, the Examiner is incorrect in calling element 9 of Higgins a cross-member. The internal surface of 9 of Higgins is merely the threaded aperture, a side view of the nozzle would show that the circular bosses on each side terminate at the lateral edges and do not extend laterally across the pipe 5. Thus, there is no internal curved surface that can act as a deflector. At column 2, lines 65 to 67 of Higgins, it is stated that the size of the nozzle at its discharge end is increased to accommodate the apertures 9 and ensure structural strength. However, there is no disclosure of the nozzle being a T-piece wherein the head of the T-piece extends across the end to define an internally curved surface that in turn constitutes the two deflectors that converge towards the exit aperture. It is the curved wall of the pipe 5 that extends between the bosses. The curved wall of the pipe 5 is in a different plane to the curvature of the head of the T-piece. The curvature of that wall does not act as two deflectors that converge towards the exit aperture. Thus, there is no disclosure in the cited reference of the structure that is the subject of the amended claims.

The Examiner is reading more into the cited reference than is actually disclosed. As Higgins is silent as to, *inter alia*, a head of the T-piece having an internal curvature which defines two deflectors that converge towards an aperture, the Examiner must then properly apply an inherency argument to the missing descriptive matter of Higgins. To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be

so recognized by persons of ordinary skill. *Crown Oper. Int'l Inc. v. Solutia Inc.*, 289 F.3d 1367, 62 U.S.P.Q.2d 1917 (Fed. Cir. 2002). Further, inherency may not be established by probabilities or possibilities, and the mere fact that a certain thing may result from a given set of circumstances is not sufficient for a *prima facie* case of anticipation. *Scaltech Inc. v. Retec/Tetra L.L.C.*, 153 F.3d 1193, 51 U.S.P.Q.2d 1055 (Fed. Cir. 1999). Occasional results are not inherent. *Mehl/Biophile Int'l Corp. v. Milgraum*, 192 F.3d 1365, 52 U.S.P.Q.2d 1303, 1306 (Fed. Cir. 1999).

In establishing a *prima facie* case of obviousness, the cited reference must be considered for the entirety of their teachings. *Bausch & Lomb, Inc. v. Barnes-Hind, Inc.*, 230 U.S.P.Q. 416, 419 (Fed. Cir. 1986). It is impermissible during examination to pick and choose from a reference only so much that supports the alleged rejection. *Id.* It is only through hindsight reconstruction and selective picking and choosing while ignoring divergent teachings does the Examiner attempt to reach the present invention through the Higgins. It is also well established, however, that hindsight reconstruction of a reference does not present a *prima facie* case of obviousness, and any attempt at hindsight reconstruction using Appellant's disclosure is strictly prohibited. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1445-46 (Fed. Cir. 1993).

Accordingly, it is respectfully submitted that Higgins fails to disclose, teach or suggest each and every limitations as recited in amended independent claim 10. Therefore, reconsideration and withdrawal of the rejection of independent claim 10 and all claims dependent therefrom under 35 U.S.C. §§ 102(b) & 103(a) are respectfully requested.

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Summary

Therefore, Applicants respectfully submit that independent claim 10, and all claims dependent therefrom, are patentably distinct. Further, as claim 12 has been rewritten into independent form to include the limitations of independent claim 10, rejoinder and allowance of claims 12 and 14-22 are respectfully requested. This application is believed to be in condition for allowance. Favorable action thereon is therefore respectfully solicited.

Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Respectfully submitted,

/John S. Sopko, Reg. #41,321/  
John S. Sopko  
Reg. No. 41,321  
Attorney for Applicant

HOFFMANN & BARON, LLP  
6900 Jericho Turnpike  
Syosset, New York 11791  
(973) 331-1700